

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 2390 OF 2005

IN

SUMMARY SUIT NO. 2227 OF 2005

The Bombay Dyeing and
Mnfg. Co.Ltd

.....Plffs.

VS.

Rajkumar Dattatraya Survase

.....Defnds.

Mr. Ashish Kamat i/b. M/s. Apex Law partners for
the plaintiffs.

Mr. M.J. Bhatt i/b. L.M. Acharya for the
defendants.

CORAM: S.U. KAMDAR, J.

DATE : 29TH AUGUST, 2005.

P.C. :.

1. By consent of the parties the motion is placed
on board for hearing and final disposal and called
out.

2. The present suit is filed for delivery of 883 bales of cotton by the defendant to the [plaintiffs. The plaintiffs are the owners of the said bales. The plaintiffs had warehoused in all 10,136 bales in the defendants godown. On 17/4/2005 due to the lightning struck on the godown of the defendants, 4980 bales of cotton is totally destroyed. Out of the balance bales the plaintiffs have removed approximately 4097 bales leaving behind 883 bales of cotton. The case of the plaintiffs is that the defendants are not permitting them to remove the said bales. Only defence raised is that the defendants are entitled to recover loss from the plaintiff in respect of damage suffered by them in fire and it is the case of the defendants that due to cotton fire was spread.

3. I do not find any merits in the defence raised by the defendant. The fire has broke out due to lightning and the plaintiffs cannot be blamed for the same. In view of the fact that there is no dispute as to the ownership of the plaintiff in

respect of the cotton bales, I am of the opinion that an order of mandatory nature sought for can be passed in the present case. However with a view to protect the claim of the defendant, if any, I propose to pass the following order :

The Court Receiver, High Court, Mumbai is appointed as Receiver of 883 cotton bales with a direction to take possession and hand over the same to the plaintiff only after the plaintiff furnishing a bank guarantee of nationalised bank to the Prothonotary and Senior Master, High Court, Mumbai for the sum of Rs.77.00 lacs. The plaintiffs also to give an undertaking to renew the same from time to time till disposal of the suit. In an event of plaintiffs failing in the suit, defendants will be entitled to the said amount.

:4:

. Motion disposed off accordingly. No order as
to costs.

sd/-
